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7-Role of Planning



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TEXAS LAND USE

A

Comprehensive Land Resource
Management Study

Report No. Seven: Role of Planning

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FOREWORD

Throughout its history, Texas has been blessed with an abundant supply of land and other natural resources capable of sustaining a wide variety of uses. This heritage has enabled Texas to grow and prosper in a manner characterized by a diversity of human lifestyles, agricultural capabilities, and business interests which are unique to our nation.

As the State has grown and developed so has the realization that our land resources are indeed finite. There is a need to study various land resource management techniques which may be useful in Texas to preclude or solve certain land use problems similar to those which have been experienced by older, more densely populated and heavily industrialized sections of the country. The seriousness of these problems has resulted in proposed federal legislation which, among other provisions, would encourage the state and local governments to develop planning and management mechanisms conducive to prudent land use practices.

Realizing the importance of these problems and the need for establishing proper land use practices throughout the state, the Governor's Office, through the Division of Planning Coordination, authorized a study of land resource management in Texas. This study is comprised of the following eight technical reports:

- * Historical Perspective - A survey of historical developments, trends, and processes in land resource management in the State of Texas.
- * Existing Mechanisms - A survey of the legal bases for existing land resource management activities in Texas.
- * Problems and Issues - A determination of existing and potential land use problems.
- * Significant Policies - An identification of existing significant public policies relating to land resource management in Texas.

- * Needs for the Future - A determination of the relative need for improving the existing approach or approaches to land resource management.
- * Management Approaches - Consideration of alternative approaches to improve land resource management.
- * Role of Planning - A study of the role and scope of land use planning as a major ingredient of a continuing land resource management program and as an element in an overall state planning process.
- * An Informed Public - Development of recommendations in regard to ways by which to best inform the citizens of the State of Texas about the need for a revitalized state and local role in land use planning and land resource management.

In this manner, factual information and objective interpretation of issues are presented with the expectation that they will provide a basis for action by those private citizens or public officials who will have the responsibility for making land management decisions in the future.

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I

INTRODUCTION

Structure of Element

This Report sets out an approach for developing mechanisms, encompassing both planning and management functions, to deal with Texas' present and future land use needs. The task of setting out these mechanisms has been divided into four parts:

- Part 1 Introduction
- Part 2 An Approach to Setting State Goals and Activities for Land Use Planning and Management
- Part 3 An Agenda for the Design and Execution of Responsibilities for a Texas Entity for Land Management (TELM)
- Part 4 Requirements for Implementing a State Land Use Planning and Management Process

Part 1 will review briefly the rationale for planning in general, the status and need for land use planning in Texas, and will set out objectives to be achieved in constructing a viable planning and management process.

Any effort to plan future land use for even a small part of Texas is a major task which in itself requires considerable thought. Part 2 proposes a general approach for developing a land use planning process which involves the creation of a temporary state body, referred to as the Temporary Planning Group (TPG). This group will be responsible for articulating state land use goals, making recommendations for an intergovernmental division of land use responsibilities, designing a permanent state entity to carry out the state's planning and management role and recommending changes in local powers and procedures required to implement the state role. Throughout the discussion, the approach seeks to maximize opportunities for coordination and public involvement.

Where Part 2 discusses the need to develop a method for initially setting state goals and standards, Part 3 presents an approach for establishing these goals and implementing the standards. After making some general assumptions about the role of state government vis-a-vis

local and regional governments, Part 3 sets out the functions a Texas Entity for Land Resource Management (TELM) must be capable of performing. This discussion of functions is not a blueprint for a new state agency. Rather, it is a checklist of the matters which must be considered by those charged with designing such a planning and management program.

Finally, Part 4 discusses several problems which must be faced if the state land use planning efforts are to be implemented. There are three basic problems. First, the powers and procedures exercised by city and county government must be improved so that they may actively and effectively participate in a coordinated planning effort by all levels of government. Second, there is a need to inform and educate the public to the needs for improved land use planning and the safeguards available to protect existing private property rights. Third, the group developing the state land use planning program must demonstrate to the Legislature that by anticipating and planning for problems which have been identified in this report, a more effective and efficient means of reaching state goals and objectives can be realized.

Benefits and Purposes of Planning

Planning is a recognized responsibility of government at all levels. However, there lingers among the citizenry an unarticulated sentiment that the concept of planning is often "foisted upon the public by self-seeking outsiders." This sentiment must be squarely faced by public officials and neutralized by encouraging broad public participation in land resource management activities. For only through participation will the value of effective land use planning processes become understood and appreciated as an integral function of governmental operations.

The need for planning is explained by two concepts. The first is scarcity of resources. Some resources are limited in supply regardless of the price a buyer may be willing to pay. Coastal beaches are an excellent example. By thinking out in advance how these resources can be most effectively utilized in the long run, it may be possible to obtain more benefits from their use. This is nothing more than a search for efficiency.

Planning does not necessarily mean sitting down with pencil and paper and designating rules and procedures specifying exactly how every dollar or every acre of land

is to be used. There are other processes for achieving an efficient use of resources. The most familiar is the market mechanism. This process is nothing more than a means for transmitting information about people's preferences through purchasing decisions.

However, the market, like most other processes is not perfect. The imperfection which generally gives rise to a need for formal, pencil and paper planning is that of externalities, which is the second concept. Externalities exist when one person's decision on satisfying his preferences adversely affects another person. An example of an externality is smoking. If two people are in an elevator and one decides to smoke, the other person is compelled to breathe the smoke whether he wishes to or not. However, the market allows the second person no way to make his preferences felt in the price of cigarettes or matches or in deciding who gets to ride the elevator. If the market is the only way of resolving conflicts between people's preferences, the nonsmoker will have his preferences violated; a cost to him, while the smoker enjoys the benefits of smoking without having to pay the full cost of achieving his preference.

If society thinks the nonsmoker should be protected, it can try to achieve some balance of interest between the smoker and nonsmoker. Buildings may be designed with certain elevators for smokers and others for nonsmokers; smoking hours may be set or smoking may be prohibited altogether. All this results from planning: deciding how an equitable balance between two conflicting interests is to be achieved when the answer supplied by the market is deemed unacceptable.

Having decided to protect particular interests, society has an obligation to avoid violating the interests of others except to the extent necessary to achieve the balance which meets the greater interests of the public. Thus efficient planning means guaranteeing citizen A's interests are protected while interfering as little as possible with citizen B's own interests.

In summary, societies plan to achieve the maximum benefits from the resources available, subject to the constraint that the distribution of such benefits is regarded as acceptable to the majority of society.

Objectives of Land Use Planning

Over the years the market system has been the primary means utilized to allocate land resources. However,

in recent years, society has become conscious that one person's decision on how to use his land can affect many others in a detrimental way. In summary, people are becoming aware of externalities in land use decisions.

It is quite common for one person's use of land to have real or potential effects on the owners of adjacent or nearby property. The effects of land use external to the actual property user or owner have been the basis for most zoning, building and subdivision regulations. These local ordinances were not for the protection of an undifferentiated public. They served to protect specific property owners from the actions of any present or future owners of property which was located nearby.

Over time, changes in technology have increased the area and number of people affected by an individual land use decision. Furthermore, in recent years as the people of Texas have become better informed and have acquired a better understanding of their environment, they have expressed a greater interest in compatible land uses. This new awareness has increased the scope of land use externalities which the public envisions as falling within the purview of planning. Today an individual may place a high value on environmental purity, whereas in earlier times with a lower level of economic well-being, he might have preferred more economic development. Thus, technology has brought unequalled prosperity, but has left many unsolved problems in its wake.

Most land use decisions today are made on economic criteria. Those individuals who own land exercise their rights of usage and sale via the market mechanism as they exchange these rights of ownership in return for money or goods and services. The call for planning is nothing more than a declaration that under our current set of public values, the net effect of market decisions is sometimes unacceptable.

Such a declaration has been made by the creation of a Texas Water Plan. The inherent premise of this plan and ones like it is that the market will not create the supply of water demanded or allocate the available supply in a manner acceptable to the people of Texas.

A rationale of "overriding public concern" is normally used by the public or governmental sector to limit the range of activities for which land may be employed. Another justification for planning is to equitably and efficiently reallocate the balance of private interests which result in land use decisions in the greater interest of

society. Through the political process, those who might be harmed by these decisions can and are given an opportunity to express themselves. They might be totally excluded from participating in a decision in which they are affected in a market transaction between buyer and seller.

In some of the literature on planning, it is apparently assumed that "government" has one interest to be pitted against an array of private interests. Much of the literature speaks of the interest of state government as if the political and administrative bodies of the state were a single entity with but one set of goals and values. On the contrary, state government speaks with many voices and represents many interests. Each of the state agencies concerned with land use decisions have responsibilities for carrying out statutory or constitutional mandates. These formalized duties often establish objectives more closely allied to some private interest groups than to broad statewide interests. State agencies are, therefore active participants in the process of balancing private and public interests.

In a similar vein, local governments frequently have a very different set of problems and interests than the State of Texas. For example, from an economic standpoint, few state officials are concerned whether or not a new factory is located in Dallas or Mesquite. The tax collectors of those cities, however, would be vitally concerned. Just as state officials are not expected to be responsive to strictly local issues, it likewise would be fallacious to assume local government will act in the interest of the state as a whole on most matters. However, on issues of primarily local concern, the local interests should continue to take precedence over the more diffuse state interest. But like state agencies and private land owners, cities and counties are active advocates for their specific interests. They cannot be expected to be impartial arbitrators where their interests are concerned.

The discussion to this point has pointed to the fact that all land use decisions are made by some form of planning process. For most decisions, the process is that of the market. For a few, society substitutes a more formal planning process. The importance of the formal planning process grows as people become more sensitive to externalities and some large part of the society comes to the conclusion that certain groups should be protected from suffering externalities caused by others.

The best way to see the past pattern of formal planning is to examine briefly existing controls on land use and other governmental policies affecting land.

A Description of Present Land Use Controls

Local Governmental Controls

The body of statutory law which enables and governs local planning, zoning, and subdivision control has been enacted and amended in a piecemeal fashion over the past 45 years. Local administrative structures have similarly been devised step-by-step in response to state law.

Texas' adoption of tools for land use guidance coincided with the active federal promotion of local land use planning and zoning in the late 1920's. Although Texas adopted the model zoning act, it did not adopt the Standard City Planning Enabling Act. However, in Article 974a of the general statutes, cities are given power to regulate subdivisions. In substance, with the exception of the official map provisions, this Article is similar to the recommendations of the Commerce Department. The American Law Institute has noted that the early Standard Enabling Act and the actual laws of states such as Texas which were modeled after the federal proposal operate on several important assumptions:

1. The owner of land is the initial decider of its use. The owner has power to use and to develop his land as he wishes except as specifically restricted by state or local legislation;
2. The public interest of the state lies in authorizing local governments to control developmental decisions of land owners within the boundaries of the local government;
3. The state enables local action, it does not mandate local planning for land management nor does it maintain a quality review of local plans or of the conformity of actual development to such plans; and
4. The purposes toward which local action may be directed are the full inventory of constitutionally permissible purposes of government action: promotion of health, safety, morals and general welfare.

The statute did specify a structure which local governments (namely, incorporated towns and cities-counties and special districts excluded, with a few exceptions) were required to establish and use if they chose to exercise state granted power to set land use policy. Cities and towns which wish to adopt land regulations may establish local planning and zoning commissions. They may also develop master plans, and recommend regulatory measures such as

zoning ordinances and land subdivision controls. Planning commissions may also take care of some administrative tasks connected with the regulatory ordinances adopted by the legislative body of the particular city or town.

The local planning commission stands in an advisory relationship to the municipal legislative body except where regulatory power has been delegated to it. A board of adjustment or appeals is another administrative branch of the local land regulatory system. This board has power to overturn enforcement decisions by a building inspector or zoning administrator if it determines that zoning or other land use ordinances have been erroneously interpreted and applied. The board also has the power to vary the terms of the ordinances if a literal interpretation would create a hardship to a citizen or landowner.

As a general rule, a city or town has complete power to exercise planning and control devices within its boundaries. Courts are able to review and reject municipal actions, but neighboring units of government have no veto over the land use decisions of another city or town. There is a fringe of varying width around a city or town for which the municipality may develop plans and enforce some of its land use authority, although this extraterritorial authority is much weaker than the power which a municipality has over its own domain.

Although the standard complement of land use policy tools has been granted to municipalities by the legislature, Texas has not occupied a leadership role in dealing with the intergovernmental complexities of land use responsibilities. It is true that even today few communities make reasonably full use of those land use powers available, and many have adopted only rudimentary protections.

Territory outside of municipal extraterritorial jurisdiction is not subject to direct land use regulation except where flood hazards have been officially recognized. Public land use policy in these areas is effectuated at present only by indirect measures such as capital improvement budgeting or very limited subdivision requirements of counties.

The Emerging Role of Regional Planning

Texas has facilitated intergovernmental coordination through the creation of regional councils of

government. These councils promote effective communication between the units of government in a region on matters such as transportation, health care, public safety, recreation, and general administration. The councils normally can afford more sophisticated technical staffs to evaluate the consequences of plans than most of the smaller governmental units.

The powers of review and comment on all projects utilizing federal funds have strengthened the role of the regional council as effective political entities. However, a weakness of the councils is that they have little, if any, power to enforce their plans and recommendations. Thus, unless consensus is possible among participating governments, the regional bodies do not represent an effective political process. This absence of implementation and regulatory authority must be considered in defining functional responsibilities in land use management.

Present State Planning Activities

Although the activities of state government influence private land use decisions, it is important to recognize that the State of Texas has not adopted a comprehensive policy concerning land use management.

A number of state agencies are engaged in ongoing activities which significantly affect land resources of the state. The General Land Office develops management plans for the state lands under its jurisdiction. The State Highway Department builds and maintains vital access ways to land throughout the state. The Parks and Wildlife Department develops large tracts of open space devoted to public recreation. Major water improvements are planned and funded by the Texas Water Development Board. Pollution control agencies influence the types of development associated with many economic activities. However, no overall state program examines the activities of these and other state agencies with the purpose of determining how their programs and activities affect important land use decisions.

Strengths of the Existing Planning System

Texas' solid economic growth rate attests to the past success of land resource management activities of private and public institutions. One example of such activity in the private sector is the Galleria Shopping Center in Houston. The Galleria has been recognized as a

high quality commercial development which embodies a spirit of civic interest in its design; an attractive ice-skating rink constructed in its center provides a unique recreational resource for many Houstonians.

An example of successful resource management at the local government level is the beautiful San Antonio River project in downtown San Antonio. The "River Walk" plan has renewed interest in downtown San Antonio by creating opportunities for outdoor cultural and recreational activities and for new commercial development.

The Texas Highway System exemplifies effective land use planning at the State level. The excellence of design and maintenance of Texas highways is widely acknowledged. Given the mandate for providing good intrastate roadways, the State Highway Department has developed a system of scenic and safe highways through the state that embodies many good land management concepts.

An agency which has in recent years made good strides in land use planning in the General Land Office. This agency within existing legislation has broadened its scope of activity and philosophy in the management of state lands under its jurisdiction.

Perhaps the greatest overall strength of Texas in land use planning is the potential for future planning which has been established over the past few years. State agencies, regional councils, local governments and universities have created capabilities and resources which can form the nucleus of a successful land use planning effort.

The level of progress and potential is far from uniform. Certain major cities have excellent planning staffs while most counties and small towns do not have any professional planning capabilities. Statewide, the talents and information do exist to a surprising degree for establishing an effective land use planning process. Texas does not have all the information or skilled manpower it needs to efficiently plan its future land use, but it has an excellent nucleus from which to build.

Weaknesses of the Existing Planning System

As the need for land use planning has increased, the capability for effective planning has also evolved. Unfortunately, there are many instances in which technical capacity and political processes have not kept pace with the economic and social development of the state.

The surge of urban growth which occurred in parts of Texas during recent decades has placed tremendous pressure on key land resources and on the institutions developed in prior decades to guide land use policy. The dominance of local control over this machinery is the focus of increasing concern as several weaknesses of local government have become evident. The following situations illustrate this concern:

Towns and cities, many under severe financial strain, increasingly realized that land use policy affects revenue and expenditure balance in their economies. Taxpayer pressures have encouraged local officials to seek highly intensive land uses which would yield more in state and local revenues than they would consume in locally supplied services. Policy decisions made on the basis of these fiscal considerations are often questionable according to the needs of the region as a whole. An example is zoning which excludes apartments and other high density housing from many suburbs.

Aggregate local government costs primarily funded from property taxation have grown enormously. Pressures on the landowner to increase economic yields from land were severely aggravated by ad valorem taxation which has resulted in a lack of consistency between land use policy and the level of taxation on land. These pressures may be seen in premature development of agricultural land on the fringes of cities and the conversion of neighborhoods of single family residences to apartments, offices and commercial uses.

Individual local governments operate a small part of the state's total land use policy machinery. In this role, they have found it difficult to support sophisticated data collection and planning operations required to achieve a full understanding of complex land use issues.

These examples point to the need for an increased role for the state in land use planning. No city or county can claim an exclusive right to regulate the development of a factory, power plant or new community which has strong impact on neighboring localities. Furthermore, many small towns have neither the technical ability nor the experience to regulate industries which are larger and more complex than the local government organization.

The question can also be asked, if all the people of Texas have an interest in the preservation of the beauty and recreational value of the Texas coast, rivers and wetlands, should one locality, eager for economic development,

be allowed to have the exclusive right to decide the fate of these scarce environmental resources?

Land use matters which are of concern to more than one locality or to all the people of Texas cannot be equitably or efficiently planned by one city or county. Therefore, an expanded state role in land use planning is dictated by existing institutional, social, economic, and environmental needs of the state.

Requirements of a Viable Land Resource Planning Process for Texas

Any attempt by state government to guide or determine even narrow categories of private land uses in a state as complex and diverse as Texas represents a major new undertaking. Certainly there are previous efforts in environmental and natural resources planning on which the state can build. However, the development of a significant state land resource management program is not an easily or quickly resolved process. There are three objectives which must be achieved in instituting any such system. They are:

Maximizing public input

Meeting federal requirements

Coordinating planning and regulatory powers

A brief definition and rationale for these objectives is a necessary point of departure for later discussions.

Maximize Public Input

Any land use planning system must encompass a wide range of interests in identifying state goals. Included in this goal-setting process should be representatives of local governments, state agencies, land developers, industrialists, conservationists and many others. Regardless of the balance of interests represented, acceptance of the resulting goals requires that those affected have an input to discussions throughout the process and an involvement in the final decision. It is this initial planning which will actually result in proposals for goals and policies to the state legislature.

Public input is also essential in the design of the management process. If a state land use management effort is to be viable, the procedures to accomplish common goals must be as acceptable as the goals themselves.

Meet Federal Requirements

No state in the union can totally control its own policies. Our federal form of government requires each state to at least meet the requirements of national interests as defined in federal law. It now appears that the Federal government will set out national land use policies and establish various incentives for compliance. The State can retain its autonomy and derive maximum benefits from the incentives offered by being prepared to meet expected national standards in its own way. While any process implemented by Texas must meet national standards, a major state effort on goal-setting and process-definition will allow the state the credibility necessary to influence federal requirements.

Coordinate Planning and Regulatory Powers

It is strongly evident in the literature of land use planning that planning not tied closely to a regulatory process becomes little more than an expensive academic exercise. Any planning process worth the effort must have the means for achieving cooperation and coordination with the actions of private developers, state agencies and local governments that are asked to comply with these plans. Thus, any planning process must be able to perform four functions.

Articulating State Goals. First, there must be a mechanism for articulating state goals, not only as broad policy statements, but also as measureable performance standards. These standards should delineate areas and development types of critical state concern and establish the characteristics of developments to be controlled in these categories. Since state goals will change over time, this mechanism must allow for the involvement of citizens and interest groups in the gradual modification of areas and required standards.

Coordinating Compatible Interests. In theory, it is always possible to regulate private action by strictly coercive means. But, such exclusive reliance on the adversary process is both abrasive and expensive, thus, ultimately rendering it ineffective. In many cases, developers will have options between which they are relatively indifferent, but which have significant impact on public goals. A planning process must be able to educate and facilitate

communication between the various parties concerned with land use decisions. Such coordination will allow developers to take public goals into account from the beginning and thus lower the costs of compliance.

This communication should not only be between government and the private sector. Some of the decisions with greatest impact on the financial and environmental well-being of citizens are made by local governments and state agencies. Horizontal and vertical coordination between public entities is equally necessary to avoid unnecessary goal conflicts.

Resolving Conflicts of Interest. Of course, coordination cannot always eliminate disputes or goal conflicts between overall state goals and those of private and public developers. Where coordination fails, there must be some mechanism for adjudication of disputes. Again, this mechanism must allow input from all concerned parties. Further, the mechanism must be designed to perform in a fashion which is consistent with the goals it is to pursue.

Assembling Data for Decision-Making. Judging the true impact of certain developments on given environmental settings is far from an exact science. Today only educated guesses are possible on the long-term interactions between manmade developments and natural ecosystems. Much has been made of the fact that regulation without adequate data can lead to environmental disasters. Much more needs to be made of the fact that too cautious regulation in the face of uncertainty can slow economic growth and result in a decreased standard of living. In any case, there is no doubt that any planning and regulatory system must have the technical capabilities to collect and analyze data on the costs and benefits of development proposals. For example, what is the trade off between a better environment and the opportunity for industries producing jobs and tax revenues?

In part, the necessary data exists in the efforts of other state agencies and other levels of governments; these should be continued. But, since overall state land use goals can be expected to be different from the goals of other entities, the data needed to verify that those goals are being met will also be slightly different from the sum of the data now being collected. Both those initially responsible for planning the state role and those responsible for the continuing planning process will have to collect limited data to fill the gaps in present efforts.

In this context of need for state action, six requirements for meeting this need were set forth. These are:

1. Involvement of those interests concerned with land use decisions in the formation of state goals and the design of the regulatory process.
2. The ability of any system adopted to meet or exceed standards set by the Federal government.
3. The ability to translate statements of policy into measurable standards for the delineation of areas and development types requiring regulation and the evaluation of development proposals.
4. The ability to educate and facilitate communications between those concerned with land use decisions so as to allow planning consistent with state goals wherever possible.
5. The ability to adjudicate disputes over land use in a manner consistent with the interests protected by state land use planning.
6. The ability to collect and analyze data necessary to reduce the uncertainties as to the impact of certain developments on prior ecological conditions.

This concludes the introductory remarks on an approach to a land use planning process for Texas. Both the concept and the present need for an expanded state role in land use planning have been discussed. Such a role is clearly based on principles of "management by exception." The purpose of state action is to restrict the range of decision for both private and public developers in those cases where broad interests need protection. Under any planning process, the vast bulk of land use decisions will continue to be made by private owners.

II

AN APPROACH TO SETTING STATE GOALS AND ACTIVITIES
FOR LAND USE PLANNING

Role of the Temporary Planning Group (TPG)

This report envisions the need for the State to create and fund a temporary organization to define a permanent state role in land use management. This temporary group will make recommendations to the Legislature and Governor on:

- a. Initial articulation of state goals.
- b. Division of planning responsibilities between state, regional and local government.
- c. Design of a permanent state entity to carry out the state management role.
- d. Changes in the powers and procedures of local government necessary to facilitate implementation of the State's planning role.

Thus, this report discusses the role of two entities. The first is the temporary organization the state should create to study the state's goals and activities in land use planning and management with a view of drafting legislation for consideration by the legislature. The second entity is the permanent state land use planning and management entity that TPG is responsible for designing through its legislative recommendations. This permanent entity will be referred to as the Texas Entity for Land Management (TELM).

This section will consider the necessary elements of an approach for TPG to utilize in arriving at a recommendation of state goals and a division of planning and management powers between state, regional and local government. The succeeding section will then construct a checklist of the functions TPG must include in recommendations for an appropriate planning and management process for TELM.

Goal setting is not the technical exercise some planners pretend it is. Thus goals are not to be set by planners but by politicians and advocates of particular interests. The goals set by a level of government are a

statement of the interests that government intends to advance and those it intends to restrict. Pursuit of such goals is an effort by a unit of government using legal authority to change the distribution of costs and benefits in the society from that distribution which would have been dictated by the market and previous government actions.

In this sense, goal setting is the articulation of a balance of interests. If such goals are really to be pursued, they must reflect the distribution of power in the state as expressed through the action channels of state governments.

The pulling and hauling necessary to strike an acceptable balance of interests requires a great deal of time. People must become convinced that some deviation from the outcome dictated by the market system is desirable. The more diffuse interests, those most likely to require political protection, must have time to organize and establish their positions. Those who stand to lose by regulation must have time to see what benefits planning might have and to analyze the cost to themselves of various outcomes. Such parties include state agencies and local governments.

Further, the TPG must have time to understand the positions of interest groups, to resolve issues of fact, and to study the political and technical feasibility of various goal statements and organizational arrangements.

If the time necessary to the proper functioning of the political process is not adequate and if the participation of all interested groups is not facilitated, what is likely to result is an expensive study, a polished report, and a technically elegant statement of goals. What is not likely to result is support from a sufficient number of interest groups to permit passage of legislation which will make the process workable. If compromise--the striking of a balance among divergent interests--is not allowed to occur prior to the introduction of legislation, it will likely occur through amendments which could defeat the legislation altogether or leave it so emasculated that nothing substantial is achieved.

The political climate and tradition of Texas is not inclined to favor increased regulation of private property. Opposition may come even from those who could benefit from such regulation. The TPG will have a strong responsibility to articulate in a clear manner the needs as well as the limits of land resource planning and management.

Specifically, both commercial interests and the individual property owner must be convinced that the management process will give due respect to existing property rights and will not abridge those rights without due consideration to the cost/benefit effect and full compensation for any loss sustained by the private owner.

TPG Tasks

Against the backdrop of these general observations, there are three specific tasks TPG should undertake. These are reviewing past state goal setting processes, insuring public participation and gathering input on inter-governmental distribution of powers.

Review Past State Goal-Setting Processes

Texas is not starting from the very beginning in preparing for a state interest in land use decisions. A series of previous and present activities have all provided conclusions and recommendations about a state role in land use management. Some of these have been:

Goals for Texas

The Report of the Texas Urban Development Commission
The Report of the Texas Rural Development Commission
(pending)

Legislative hearings on prior land use legislation
and recent Interim Legislative Committee reports
State-sponsored studies on power plant siting
The Texas Coastal Resource Management Program
Reports of the Texas Advisory Commission on Inter-
governmental Relations.

The TPG should carefully examine not only the content of such reports, but should determine what action by state government resulted from their findings. Such an assessment should give some indications on what goals have the support of the polity and which represent the ideas of planners.

In order to gage sentiment at the Federal level, it will be important for the TPG to analyze and follow the progress of the proposed federal land use policy and planning assistance acts. The group should also communicate with Texas' representatives in Washington as well as with those groups lobbying in favor or against such legislation.

Insure Public Participation

It is important that early in its existence, the TPG set up mechanisms for receiving input from groups and citizens at large. Such mechanisms might include well-publicized public hearings held at locations throughout the State, preceded by sufficient notice and public information to allow groups to prepare statements of their positions.

In structuring public participation, attention should not be limited to private interest groups. Local governments have a very important role in land use. As long as the property tax is the mainstay of local finance, state actions which encourage or inhibit various types of development at various locations will have direct impact on local treasuries. For example, if a city has flood plains zoned and taxed as residential land, and the State prohibits development because of overriding State concern, this will force the city to lower the assessment of the land with a resulting loss in revenue.

State agencies are in a similar situation. The actions of each agency which have an impact on land use should conform to state land use goals. However, State land use goals may conflict with the sometimes narrower goals being pursued by each state agency. These agencies are generally represented by fairly powerful, articulate interest groups. Unless their interests are fully acknowledged in any balancing of interests through goal statements, chances of effective pursuit of such goals are decreased.

The format of public hearings should not be dismissed as a detail. Even those who have a vested interest in particular policies regarding land use often cannot articulate that interest and have never thought through the trade-off between economic growth, environmental quality or other public objectives. In order to be truly effective in assessing the wishes of the people, it may be necessary to prepare preliminary sets of goals and procedures for their consideration and reaction. Thus, hearings might be preceded by briefings in which the TPG presents one or more alternatives and invites reaction. While such feedback hardly gives an accurate reading of the balance of opinion, it does seem superior to taking testimony and then writing recommendations without having an idea of how people would have reacted to an array of specific alternatives. (See Appendix C for a more detailed discussion of the public hearing process.)

Gather Input on Distribution of Powers

It should be made clear that all current land use questions will not be dealt with directly by the State. The proper assignment of planning and management responsibility to local, regional and state government is a very important consideration for any planning system. Public input should not be limited to the question of goals, but should include the question of which level of government will exercise the necessary implementation powers.

TPG Data Needs

To this point, the task of the TPG has been represented as a predominantly political one. This should not obscure the technical capabilities needed to carry on this process. If the TPG is to be as conscious of the realities of the environmental and technological matters as it is of the political process, then certain data and technical staff will be required.

The TPG needs data to perform three tasks: First, to document the existence of various problems and to verify its recommendations on the need for state action; second, to resolve the conflicting assertions of various parties over current conditions and the effects of adopting given sets of goals. Finally, in order to illustrate its recommendations, TPG will need data to produce examples of area delineation, development standards and proposal evaluation. For instance, to demonstrate the process, the TPG should have sufficient data to classify an area of proposed state planning and management, define appropriate standards necessary to achieve policy goals in the area, then evaluate typical proposals for a new development (factory, refinery, resort) to show how such standards may effect development plans.

It should not be necessary for TPG to engage in a major data collection effort. For the most part, data should come from testimony by various groups and from information made available by state, federal and local agencies. Only when important questions are unresolved by information currently available should TPG staff be used to gather new data.

TPG Staffing

It is a political necessity that the TPG be composed of the representatives of various land use interests,

elected, appointed or ex-officio. Thus it is likely these individuals will not possess the technical knowledge to evaluate the claims of various industries or environmental groups. There will be a need for adequate professional staffing to enable the TPG to synthesize the information received, to analyze potential policy goals in terms of the performance standards needed for their advancement and to analyze the economic consequences of enforcing various proposed standards. Since the real decision facing the TPG is the interests to be protected by the political process, the TPG must have some understanding of what costs and benefits they are conferring on which groups before they can make intelligent policy decisions.

TPG Organization

From the foregoing description of the tasks confronting a planning group, it is obvious that there are numerous ways in which the TPG could be constituted. The next few paragraphs will set out some of the factors which should be considered in making this decision. To simplify the exposition, we will assume that the staffing discussed above would be separate from any staff a constituent member of the group may have at his disposal.

The discussion to this point has emphasized the need for a wide range of interests to be represented on TPG. The best way to achieve this is probably a commission composed of some mixture of representatives of private interest groups, local governments, state agencies, the legislature and the Governor's Office. This mixture can be specified in the legislation establishing TPG either through ex-officio designations or through giving the Governor and Legislative leadership the ability to appoint a given number of people to the commission.

There is an almost infinite variety of arrangements for selecting TPG membership. There is no objective basis on which one arrangement can be considered superior to all others. Different alternatives will result in different balances of interests and will thus influence the recommendations on goals and mechanisms for implementation. The selection of an organizational alternative to carry out the tasks of TPG is in itself a political decision.

Political Needs and TPG Organization

To be meaningful, planning efforts must be conducted so as to create the motivation for their enactment

as legislation. Action on TPG recommendations will require the support of the Governor and a majority of the Legislature. Any organizational alternative which could not command such support, or is likely to produce recommendations which would produce so little support as not to be fully debated should be ruled out.

Summary

This section has set an approach for articulating state land use goals, making an intergovernmental division of land use powers, designing a permanent state entity to carry out the State's planning role and making changes in local powers and procedures required to implement the state role. This approach consists of the creation of a temporary commission and adequate staff financed and empowered to conduct public hearings, technical studies and limited data gathering. The final output of the TPG will be recommended pieces of legislation intended to accomplish the four tasks set out above. Emphasis has been placed on the importance of insuring that a broad range of interests are represented on the TPG and that the selection process is such that both the Legislature and the Governor have a continuing interest in the work of TPG.

The functional requirements which must be fulfilled in the design of the permanent state entity are further discussed in the next section. The detailed prose and schematic descriptions of recommended TPG procedures are provided in Appendix C.

III

AN AGENDA FOR THE DESIGN AND EXECUTION
OF RESPONSIBILITIES OF THE TEXAS ENTITY FOR
LAND MANAGEMENT (TELM)

If an organization is to be effective in carrying out its goals, it must be designed by those fully aware of and sympathetic to those goals and with a good understanding of the day to day tasks required to achieve them. For this reason, the report assumes the TPG is the proper body to recommend the organization of the state's land use management program by designing the state entity to execute the program and translating that design into recommended legislation. This section is intended to serve as a guide to the TPG in performing this task by providing an agenda of the functions the agency must perform in order to meet conceivable state goals.

Assumptions Concerning the Direct State Program

As mentioned earlier, it will be necessary for the planning group to make some assumptions about the allocation of planning responsibilities between levels of government in order to make design recommendations for the state effort. This report has a similar need to make assignments in order to set out the necessary characteristics of state planning machinery.

It is assumed that the major planning of land use will continue to be at the local level. This will mean that most restrictions on private action will continue to be set and enforced by local governments. This assumption necessitates a brief discussion of the need to reform local land use regulatory procedures and extend those powers over unincorporated land to the counties as complements to the state and municipal effort.

Changes in City Powers and Procedures

If the state intends to rely primarily on city government to engage in detailed land use planning for

those areas subject to city control, the State must make some attempt to tie planning to the decisions made by city Zoning boards. This could be accomplished in several ways. Perhaps the most direct is the adoption of those sections of the American Law Institute Model Land Development Code relating to local procedures.

This would mean the combination of zoning and subdivision regulations into one process. Revision of the existing enabling acts would also include requirements that changes in zoning and subdivision regulations be justified in terms of a master plan.

Procedurally, local land use regulation has long been one of the most questionable of regulatory processes. Usually, there are no transcripts of proceedings or any record of the reasoning which resulted in a decision. There are few protections such as the right of affected persons to cross-examine expert witnesses for the other party. Before any powers of local government are increased, legislation should also be drafted to make "due process" as much a part of the enforcement of land use plans as it is a part of the enforcement of contractual relations.

A final change is necessary in state enabling legislation to facilitate the orderly growth of cities. To bring city planning powers in line with the liberal annexation powers provided by state statutes, cities should be given full zoning and subdivision powers in their extra-territorial areas.

Changes in County Powers and Procedures

The other unit of local general purpose government is the county. At present, counties have only the most limited powers to manage land use. This means that over a great part of Texas, there is no planning to meet public needs. Counties should be given permissive zoning and subdivision powers. However, these powers should be drawn along the lines of the ALI enabling act and not the present pattern of city powers and procedures.

It would not be a responsible act for the state to give counties new power without requiring that they demonstrate the ability to use it in a rational manner. In this case, any legislation to give counties land use planning powers should make the exercise of such powers contingent on the county's ability to demonstrate that it has a plan that can be justified in terms of goals

acceptable to the State, that it has access to the technical staff necessary to keep the plan up to date, and that its capital improvements budget is compatible with stated land use goals.

Role of Regional Councils of Government

Regional governments are of growing importance in Texas. However, because of their present structure, and delegated authority they are not well suited to exercise regulatory powers. This report envisions their role in the immediate future as (1) developing regional land use plans; (2) comment and review on the delineation of critical areas and types of development by the state; and (3) the evaluation of development proposals.

Under current statutes, regional councils have no power to enforce their plans other than through the voluntary cooperation of member governments. If a regional plan involves an area or development of overriding state concern, the regional council or any member government could seek to have the plan enforced by the State.

However, many matters in regional plans will not be of immediate State concern. If such matters are to be resolved in favor of the regional plan, there is a need for some process stronger than voluntary cooperation. One possibility is to rewrite existing regional government legislation to add regulatory powers. A second approach would be to allow COGs to bring matters of only regional concern which they are unable to resolve under existing authority before the TELM. This seems workable; it would only increase TELM's volume of work, not alter its basic functions.

The Direct State Program

The role of the TELM will be to set out those areas and types of development which have greater than regional impact or which are of overriding state concern. Any development in such categories would require a development permit before any change in land use could begin. Such permits would be conditioned on the development's ability to meet performance standards necessary to achieve legislative intent as interpreted by the regulatory body.

Many variations are possible within these broad specifications. For instance, the state has the option of

either issuing permits through the TELM or delegating powers to local governments capable of exercising them in a manner consistent with state goals.

It is clear that this definition of state responsibility represents management by exception and not any sort of all encompassing planning. The planning effort consists of deciding which areas and types of development should be regulated in order to achieve state goals, and analyzing the performance standards that need to be enforced to ensure that these goals are achieved.

Functional Responsibilities of TELM

In discussing the functions of the permanent state entity, it is necessary to set out some terminology to prevent confusion. The permanent organization will be made up of two basic components. The first is the group responsible for setting classifications and standards, for granting or refusing development permits and for hiring and supervision of a staff director. This group may be elected, appointed or ex-officio as the Legislature and Governor desire. When the report refers to TELM, it is to this group that reference is made.

The second component is the staff. This staff will be directly employed by TELM, however initially it may be necessary to borrow staff from existing state agencies until TELM has time to employ the appropriate personnel. The staff's function will be to perform administrative tasks for TELM, to conduct technical studies as requested by TELM and to make all arrangements for public hearings including public notification. This component is referred to throughout this section as staff or TELM staff.

Any organization charged with planning and management responsibility must be able to perform three functions. First, it must be able to articulate the interests to be protected by the regulatory process. Second, the organization must be able to resolve the conflicts of interest which fall within its scope of authority. Third, the organization must reach its decisions in such a way as to legitimize the state's involvement with the private decision process. The following paragraphs will explain and elaborate on these functions.

Articulation of Interests

Legislative intent is seldom so precisely stated as to remove freedom of interpretation from the organization

created to carry out that intent. Such intent on land use planning should be no exception. To make such language operational, TELM should have mechanisms for:

1. Delineating areas and development types of state concern.
2. Translating policy statements into enforceable performance standards.
3. Reconsidering the degree to which various interests should be favored over other interests.

The delineation of areas and types of development of state concern requires a blend of professional staff work and ample opportunity for input from state agencies, local government, regional councils and the general public. One approach for initial delineation is to have TELM staff prepare tentative maps of the areas they feel are covered by legislative goals and policies. Such maps would be distributed and publicized so that interested parties will have something specific to comment on at public hearings. Based on the reaction to proposed delineations through written statements and testimony, the policy making component of TELM would approve initial delineations.

Concurrently with delineation of areas and based upon the policy approved by the legislature, the staff would recommend standards for enforcement in the various areas and over certain types of development. These tentative standards would also be circulated to relevant state agencies and local government for written comments. Enforcement of such standards would only begin after final TELM approval.

The major basis for legal challenges to such planning in other states has been the claim that the standards constituted an uncompensated taking of property for public use, or that the standards and delineations could not reasonably be said to fall within legislative intent. These considerations require that careful thought be given to the definition of areas and development types. Such definitions must be sufficiently broad in scope to give TELM the opportunity to operate effectively and adjust over time. On the other hand, they must not be so broad as to be unconstitutional.

The definitions adopted by the State of Florida appear to strike such a balance. They allow the planning agency sufficient discretion to avoid both charges of unconstitutionality and abuse of discretion. This report endorses these definitions, reproduced in Appendix B, not in themselves perfect for Texas, but as examples of broad

definitions which seem workable but yet meet legal requirements for enforceability.

The sensitivity of the public to the protection of certain interests does not remain static. A comparison of the concern for environmental interests versus economic development in 1950 and 1973 should prove this point dramatically. No matter what initial legislative intent is set out, the reasonable interpretation of that intent will change over time.

This means the TELM must have access on a continuing basis to the data and technical staff needed to translate policy to standards and areas and development types of state concerns and vice versa. Without this flexibility, the regulatory process will become increasingly dysfunctional as social and economic conditions change through time.

It should be noted that the real balance of interest is struck by the composition of the body making permit decisions. Thus, as the membership on TELM changes, the balance of interests protected and restricted will change as well. This built-in pressure for changing delineation of areas and standards underlies the need for technical staff.

But, gradually changing membership of TELM is not enough. The agency needs a mechanism whereby interests and individuals can present their cases for changes. While a member of TELM may be sympathetic to a change, he may not always be aware of any demand for such a change, or he may be unable to articulate it. There should be public hearings where the merits of reclassifying certain acreage or type of development can be argued as well as for advocating adjustment in the standards enforced in such situations.

✓ Resolution of Conflicts

The second function the TELM must be able to perform is the resolution of conflicts over land use which come within its scope of authority. This function is made up of three capabilities:

1. An ability to determine which specific tracts and developments fall within the scope of regulation.
2. An ability to evaluate development proposals and objections to them as to the accuracy and sufficiency of supporting data.

3. An ability to compare the conflicting contentions and predictions of the parties to a dispute so as to enable TELM to see the logical consequences of accepting certain combinations of contentions and predictions as a basis for a permit decision.

The burden of proof that a development should not be regulated or that a permit should be granted clearly must lie on the developer. The developer should have the most information about the proposed development. Any cost planning and engineering studies should be borne by the developer. This will relieve the TELM staff of the task of collecting most of the data needed to evaluate a proposal by allowing it to be obtained through interrogatories to the developer.

Such an arrangement puts a premium on the ability of the technical staff to ask the right questions. Many types of development are quite unique and complex as regards their interaction with the environment. It should not be assumed that one biologist would know the right data to request from both an oil refinery and a recreational development. Asking the right questions will require an adequate staff and/or consultants familiar with the characteristics of the specific industry under consideration.

A second task of the TELM staff will be to evaluate the accuracy and sufficiency of the data provided by the developer. In many cases, this task will be made easier by conflicting data provided by opponents of the development. But where such opponents do not exist or do not have the technical capability to challenge the developer's assertions, it may be necessary for the staff to seek a second data source either through the literature, through data from an independent data source, or through additional data collection.

Finally, the TELM staff must be able to synthesize the information available in a way which will allow TELM (which is responsible for granting permits) to reach a decision. Where there are no conflicting assertions of fact, this synthesis may be merely an opinion by the staff as to whether the proposal meets current standards or can be modified to do so.

In more complex cases, there may be questions of current conditions and the effects of the development which cannot be answered without a large measure of uncertainty. In such cases, it is the duty of the TELM technical staff to present the regulatory body with the policy implications

of answering such questions one way or another. It is, however, the responsibility of TELM to decide how much uncertainty the state wishes to accept in pursuing land use goals.

Often a distinction is made between planning and the administration of a regulatory system. Such does not necessarily exist. There is no good reason why a member of the technical staff could not first be assigned to work as part of a team evaluating an issue to determine whether an inland swamp should be declared an area of critical state concern and later work with another team evaluating a proposal to build a new power plant.

To get the most out of the staff, they should probably be considered as constituting a pool from which teams can be drawn for studies of proposals, standards and classifications. Since all three involve many of the same skills, there is no justification for duplicating these skills in two separate boxes on an organizational chart.

It is a familiar scenario in any organization that planning is often put aside under the pressure of day to day administration. This situation is largely avoided in the process of land use management since the requests for changes in standards and classifications, as a continuous updating of planning, are just as much a part of day to day administration as the evaluation of development proposals.

The size of the staff required will largely be determined by the scope of planning and management undertaken, the volume of developments which fall under this scope, the technical complexity of those developments, the degree to which evaluation functions are delegated to other levels of government, and the speed with which requests for action are to be handled. TPG will be well along in its organizational design before it is possible to specify the exact size and composition of the TELM staff.

Legitimizing the Planning Process

Finally, there is the question of legitimizing the TELM planning process. The essence of land planning will be the restriction of the set of decisions the state will allow the owner to make with regard to certain land and certain types of development. The process which imposes such restrictions will have to be viewed as fair and in accord with popular ideas of due process if it is to be politically feasible. A legitimate regulatory process will have several of the following characteristics.

✓ One of the most desirable characteristics of any regulatory process is that its decision makers be accountable to those interests they are charged to protect, rather than those they are to regulate. Accountability essentially means that the decision makers are subject to political pressure.

In the past, the pattern in Texas has been to set up regulatory commissions as multi-member bodies with long, overlapping terms. The governor is incapable of removing members once they have been confirmed by the Senate. The rationale for this procedure is to remove the regulatory body from "politics."

Such a rationale avoids the fact that regulation is a political process. The commission system makes it difficult for those dissatisfied with commission practices to effect change by bringing pressure on the Governor, the Legislature, or any other elected official.

The balance of interests represented by the membership of TELM must have a sufficiently slow rate of change to allow public and private developers to make reasonable predictions of agency decisions. A regulatory process functions best when the patterns of its decisions allow those it regulates to plan their actions in a manner acceptable to the regulatory body. By allowing potential developers to predict agency decisions, many proposals may never be formulated, and most that are will incorporate the relevant constraints in their basic planning. }

This not only lightens the volume of proposals for the TELM, but, also reduces the burden of regulation on private and public developers. Land will not be purchased which clearly could not be developed. Elaborate architectural plans will not be rendered useless by the imposition of unexpected constraints. As the uncertainties of regulation are reduced, the risks facing the developer decrease, particularly risks of delay. If the regulatory process is not to discourage desirable development, it is important to keep these uncertainties as low as possible.

Uncertainty is minimized by having a gradual turnover of membership of the permit granting body in any year, say one third or less, as opposed to a change of a majority of the membership at one time. This, of course, does not prevent the possibility that changing even one member might change the voting majority from one position to another which is quite different. As long as the votes of the body are matters of record, this presents no great

problem. A developer should be able to interpret an 8 - 1 decision differently than he would a 2 - 3 vote.

Another situation where a fairly stable balance of interests is important is illustrated when developments with large lead times are involved. Projects such as power plants and new communities may require eight to twenty years before planning and development are completed. Assume that a development permit is granted. It is quite likely that during the development period there will be a need to amend the development proposal. Drastic changes in the policy-making body could use these needed changes as a means of totally blocking development even if the changes did not violate the interests of those represented at the time the original permit was granted.

This is not to say that a developer can expect public policy to remain unchanged throughout a decade. It does mean that policy should change gradually to allow the developer to plan intelligently and economically.

A second measure of the legitimacy of the regulatory process is the way in which it fits into the framework of existing legal concepts. A set of policies or procedure which violates constitutional safeguards of well-established legal concepts is likely to be quickly overturned or emasculated by the judiciary. This situation benefits no one. Such mechanisms increase the risks of development without providing any real protection for those adversely affected by development.

Finally, there is the matter of public involvement in the regulatory process. Legitimacy requires that any affected citizen or interest group be allowed to present its position to the regulatory body.

TELM Data Needs

In performing the functions of articulation, conflict resolution and legitimization, a land use management system must have adequate data. Like staffing requirements, these requirements must be determined in light of the scope of the planning and management the agency undertakes and the standards it intends to enforce. However, there are several points TPG should consider in making recommendations about funding and procedures relating to data.

In order to classify land and development types and to set standards, TELM must have access to detailed

data on current ecological, economic and social conditions. While significant gaps still exist in data available on these matters, a great deal of work has already been accomplished. This means that TELM should not have to commit significant amounts of its staff time to the collection of basic data. In many cases, the data available from other state, local and federal agencies will meet TELM needs. To satisfy TELM needs for current data, the problem may consist more of finding what already exists and how to gain access to it than in setting up new data sensors.

Thus, one of the first tasks of TELM staff must be an inventory of the data currently available. This inventory will be concerned not only with what data is available and from whom, but also the manner in which it is stored and the available means of retrieval.

One of the most promising state efforts now in progress is the Natural Resource Information System (NRIS). When totally implemented, this system will give quick access to data on the geologic, hydrologic, archeological, botanical, economic and social characteristics of the state.

Another data system under development is the mapping of land potential by the Bureau of Economic Geography at The University of Texas at Austin. This effort should draw from and be compatible with NRIS. Both these systems are discussed in greater detail in Appendix A.

Data alone will not be very useful. Between the collection efforts of state agencies, the U.S. Census Bureau, and local government, TELM could quickly be buried in so many numbers as to make them all unusable. It is important that the TELM give serious thought to the methods of and purposes for manipulating such data.

Much of the work of TELM will be attempting to predict the social, environmental and economic impact of proposed developments. This implies the need of a means of simulating various outcomes. Data enumerating the location of present land resources is indispensable to prediction. However, such predictions also require models of the relationships of variables.

Information in a computer is only useful to the extent it can be retrieved from the computer in a format which aids decision making. It is fair to say that some data banks have not been very useful in this regard. Certain data systems appear to be designed more to fit the convenience of programmers than the needs of decision

makers and their staffs. This is often justified with the argument that user-oriented programming is very expensive. But so is data collection and computer hardware. If the money is not invested in programming to meet the needs of those using the system, to a large degree, the money previously spent on collection and hardware is wasted.

In considering state data needs for planning, sampling should be favored over enumeration whenever possible. This will not only reduce the cost of data collection, but will result in more detailed and more timely data with only minimal losses in precision. Given the limited time available to the TPG, much of their data collection should be sample surveys, particularly in the social and economic fields.

It is frequently argued that no regulation should take place until data collection efforts are completed. However, no matter how much data is collected, there will always be those who say more is needed before restrictions can be imposed. But assuming the balance of interests on TELM remain the same, marginal additions to the store of facts will move classifications and standards only in small increments. Implementation of TELM should not be made contingent on the completion of massive studies. Rather, planning should be begun as soon as possible with the understanding that standards and classifications are always subject to revision in light of new information.

Such a stance puts the pressure on those burdened by regulation to produce data as quickly as possible rather than using the lack of information as a brake on state action.

To summarize, TELM has a need for both data on current conditions and means of projecting future conditions. Fortunately, state data collection efforts already in progress seem likely to satisfy most of TELM's immediate needs. Some new data collection efforts will be necessary, but the bulk of data on current conditions should come from other state, local and federal agencies. TELM should devote considerable attention to increasing the compatibility of these various data sources and in organizing retrieval capabilities which make the data more compatible with decision making. Finally, "lack of data" should not be allowed to postpone the initiation of TELM's activities.

Staffing Considerations

Most of what can be said about staffing at this stage of system development has already been covered. However, there are two additional points which deserve attention.

The objective of regulation must be to achieve state goals at the minimum detriment to those regulated. In land resource management, time, as expressed in interest rates and capital commitments, is one of the most costly inputs to development. The State has an obligation to perform its regulatory functions in a timely manner. Equity requires that the Legislature staff the agency adequately to prevent long waiting periods of evaluating the development proposals.

Several states already performing land regulatory functions have put time limits on steps in the regulatory process which grant automatic permits unless hearings or other actions take place. Such provisions should be considered in the Texas approach. The most effective step the State can take to prevent delays is to provide sufficient staff to process applications as quickly as possible without sacrificing accuracy.

Adequate Public Notice of TELM Action

Because of the adversary nature of a regulatory system, public notice of proposals under evaluation, reclassification of areas and alteration of standards is essential. Because of the large number of interests which may be affected by a single land use, special provisions need to be made to make sure affected interests receive notice at a time which allows them to develop and present a position before any decision is made.

Most legislation involving public hearings specifies notification by publication in a newspaper. It may be assumed that few people regularly read such notices. Where a development is newsworthy, such notices may be supplemented by coverage in print and electronic media. However, such coverage is not a reliable means for informing all who may be interested in the details of a development proposal.

To insure adequate notice, it would probably be wise to establish permanent and special mailing lists. Notice of all proposals should go to all state agencies, environmental groups, industry groups and legislators.

The special mailing list for each proposal should include affected local governments, property owners and regional bodies. Such mailings would be in addition to publication requirements. Whatever the means, adequate communication between the regulatory body and affected interests is of the essence.

TELM Coordination Responsibilities

The task of this section was to define an approach to an on-going planning effort by setting out the characteristics a state entity should possess to accomplish that effort. It is important to remember that in designing a new state entity, the TPG will not write on a clean slate. Existing state agencies and local governments have well established interests in various aspects of land use planning. In many cases, TELM will have to employ its coordinating powers to resolve conflicts between these interests and those of private groups, between the interests of two state agencies or between local government and state agencies.

Such coordination is sometimes not easy. However, it can be made far less difficult if agencies and local governments are given a clear understanding of TELM goals and processes. Even more important, these entities must be given adequate opportunities to make their interests and positions known.

One of the main reasons state agencies and local governments might tend to resist TELM is the uncertainty introduced into their environments. By creating an overall land use planning effort, the Legislature will have changed the State's decision making process where land is concerned.

For this process to be successful it may be necessary to develop more effective mechanisms for communication and cooperation. As important as such mechanisms are, they do not appear extremely complex on paper. Several such mechanisms have already been discussed. They include access to TELM staff, notice of pending proposals, and public hearings. Other mechanisms will include (1) seminars to familiarize the personnel of other agencies and levels of government with TELM procedures, capabilities and goals and (2) possible exchanges in staff to allow the key personnel of affected agencies an inside knowledge of TELM decision making processes. These coordinating mechanisms are discussed and diagramed in detail in Appendix C.

Mechanisms can only establish channels for communication; they can seldom force people to communicate in more than a formalistic sense. People tend to engage in meaningful coordination only when they see this as necessary to successful performance of their jobs. If agencies and local government feel they must coordinate and communicate with TELM to build highways and acquire parks, they will do so. If they can avoid the need for this extra communication and still perform their missions, they will tend to do so.

This leads to the conclusion that the most important factor in obtaining communication and coordination between TELM and other governmental entities will be the support land use management receives from the Governor and Legislature. If the legislation is riddled with loopholes which seem to encourage agencies to seek exemption from regulation, it is likely they will do so. Communication in government is no more a purely technical problem than is goal setting. Both revolve around the balance of interests and power in government. No one should delude himself that meaningful coordination can be achieved simply through elaborate mechanisms. Coordination between TELM and other governmental entities will be effective only to the degree the Legislature and Governor supports its actions.

Summary

It should be recalled that one purpose of this report was to set out an approach to be used by a TPG. The design parameters have been left sufficiently broad so as to encompass a great number of specific arrangements. In conjunction with previous sections, this section provides a complete approach for a TPG to move from research and hearings to technical studies and legislative recommendations regarding the role of state government in land use planning and management. An exact recipe has not been provided.

Designs, like goal statements often end up as polished, but dusty, documents. The final section of this report will consider some of the requirements of implementing a land use planning and management process of the scope just described.

IV

REQUIREMENTS FOR IMPLEMENTING A STATE
LAND USE PLANNING PROCESS

There are three main tasks to be performed in order to implement a planning process of the general type described in Part 3. These tasks are (1) a revision of local regulatory procedures, (2) informing and educating the public, (3) motivation of the Legislature.

Revision of Local Powers and Procedures

If most decision making on land use matters is to continue at the local level, there is a pressing need for improvement in regulatory procedures at the local level. The American Law Institute, among others, has pointed out many of the weaknesses in the zoning and subdivision process. There is no really convincing explanation for the lack of transcripts of hearings and written decisions of planning commissions and zoning boards. Several parts of the ALI Model Land Development Code perform just this function. The provisions of that code are analyzed in the Sixth report of this study entitled Management Approaches. Passage of Articles 1, 2, 3, and forthcoming articles on appeals, records and enforcement or their equivalents is an indispensable ingredient in any attempt to improve the overall land use planning process.

A large percentage of the land in Texas is not really regulated by any unit of government. Specifically, there is no zoning and quite limited subdivision control over all unincorporated lands in Texas. Unless the state wishes to undertake direct regulation of such areas, it is desirable to pass legislation giving county government powers similar to those of the cities for regulation of these areas. Of course, any powers extended to the counties should be subject to the ALI procedures mentioned above.

Possible Delegation of
State Powers

In fashioning organizations to administer planning and regulatory powers over areas of critical state

concern, the state has the option of forming new state administrative capacity or delegating at least original jurisdiction to city and county government. If delegation is chosen, it would encompass only the evaluation of proposals, not the classification of areas or developments or the setting of standards. The need for rather elaborate technical staffing and access to complex data banks has been examined above. Though the need for those resources is widely recognized, only a few of Texas' larger cities can afford them. Some technical assistance is necessary if cities are to grant permits. Delegating power without the prerequisites for execution can only result in ineffective and/or inequitable regulation.

✓ In the event delegation is desired, it will be necessary for the state to provide those entities exercising permit granting powers with extensive technical assistance. Such assistance might take the form of staffing grants, the loan of state technical experts, or monies for consultants. The other alternative is to make delegation powers strictly contingent on the demonstrated technical capabilities of the city or county to exercise such powers. This is likely to restrict any delegation to a few of Texas' largest cities. Of course, a middle position can be established with some formula for matching grants to meet such requirements.

✓ To summarize, before any process is implemented at the state level, or concurrent with that implementation, it is important to upgrade the overall system of land use regulation by upgrading the procedural and technical quality of regulation at the local level. Further, unless there is some regulation of all land at the local level, better performance by the cities will merely serve to drive substandard development to the unincorporated areas. An extension of land regulation powers to the counties is also necessary to an overall system of land use planning.

Public Education

The second task which must precede implementation of a state land use planning and management effort is the education of the public on the weaknesses of the present system, present and future needs for management and the benefits to be expected from the process. These needs and weaknesses were discussed briefly in the introduction to this report. The specifics of such an informational and educational effort are the subject of the eighth report of this study entitled An Informed Public.

Obtaining Legislative Support

The third task required for implementation is familiarizing the Legislature and the Governor with current and future land use problems and needs. It has become fashionable to cast all decision making in terms of the so called scientific approach:

- Specify goals and objectives
- Formulate alternatives to achieve goals
- Evaluate the costs and benefits of each alternative
- Select the most desirable alternative
- Implement the alternative
- Evaluate feedback for changes in goals and costs of various alternatives

It would be quite simple to "fill in the blanks" so as to make this paradigm fit the design and implementation of a state land resource management system. Unfortunately, much of the evidence points to the conclusion that few men or organizations behave in this manner. There are currently many urgent problems occupying the attention of Texas Legislators. Some of the issues are urgent because of court decisions. Others demand immediate attention because problems have reached the crisis point and public opinion is well organized to gain the attention of the Legislature.

With all these demands for action, a legislator may seldom have time to fully understand the background of the problem, let alone explore the many possible alternative solutions.

Given that some change in state responsibility for land use management is desirable, how is it to attain the needed support of the legislature? The specifics are important not only as regards timing, but because the nature of the problem will have a great deal to do with the initial scope of management, how much the state is willing to spend on the technical and adjudicatory elements and what interests are likely to be involved.

One way in which the issue of land management could arise is through federal action. It is possible that several of the proposed federal acts on land management could make federal funds in certain programs contingent on development of a state plan regarding critical areas and certain types of developments and an agency capable of administering the plan. This pending legislation might motivate the state legislature to act prior to actual passage at the federal level to maintain state determination in this important area.

In many of the states which have enacted major land regulation roles for state government, there has been what was perceived as a direct threat to the state from out-of-state interests. In Oregon and Washington, the threat was hordes of Californians. In Vermont, it was the spectre of thousands of New Yorkers building second homes. In Maine, there was a fear that the international petroleum industry would blacken the coast with oil spills. In Hawaii, the goal was to prevent destruction of agricultural land to house the large number of permanent migrants and vacationers from the mainland.

Most of Texas' land use problems as set out in The Problems and Issues Report are caused by internal groups and forces rather than those external to the state. TPG should take account of this fact and develop a management program that will effectively deal with these problems and one that can be easily communicated to and understood by the legislature.

Many states have responded to sudden pressures for state planning in hasty and ineffective ways. In other cases, planning which was rapidly instituted has damaged certain interests without delivering anticipated benefits to others. Authorizing formation of the Temporary Planning Group would serve as a useful first step in developing a meaningful land management program for Texas. The TPG serves the Legislature as an amplifier, letting it sense pressures before they become acute, or, alternatively, providing proof that the pressures that do exist are based on false assumptions instead of facts. Once formed, TPG has the responsibility to act as an accurate reporter of the pressures, counseling the Legislature and the Governor on the facts and the likely consequences of those facts.

Assuming TPG does its job well, the Legislature will be fully aware of land use problems and be well equipped to respond to legislative recommendations resulting from the study.

APPENDIX A

In June, 1972, the Water-Oriented Data Programs Section of the Interagency Council on Natural Resources and Environment (WODPS) presented a report recommending the establishment of a Natural Resource Information System for the State of Texas. If this recommendation is implemented, it should meet the bulk of data needs of a general state land use planning agency. In addition, access to the system via remote terminal should give regional and local governing bodies the data necessary to conceive their own plans and to determine their compliance with state standards.

The WODPS recommended that the State of Texas should pursue the Development of a Natural Resources Information System (NRIS) to facilitate the fulfillment of the specific statutory responsibilities and administrative needs of the various agencies involved in planning, developing, operating, managing, conserving, and protecting the natural resources of the State. A major objective of the NRIS is to provide maximum availability of computerized natural resources data and information consistent with cost and efficiency.

The Interagency Council on Natural Resources and Environment subsequently charged the WODPS with the task of establishing an NRIS task force to proceed with preliminary data categorization and identification activities. The task force, comprised of representatives of all member agencies of the Council first "define" natural resources by developing a set of categories and subcategories, which will adequately "contain" the data later identified.

The following categories and subcategories have evolved from the identification activity and represent a "definition" of the data and information which may ultimately be included in the Texas Natural Resources Information System:

- I. Geographic Base Data
(includes land mark data and political subdivisions which serve as supportive categories to provide a common denomination to locate natural resources)

- II. Meteorological Resources
 - A. Climatological
 - B. Air Quality
 - C. Man's activities*
- III. Biological Resources
 - A. Animal
 - B. Plant
 - C. Micro-organisms
 - D. Man's activities
- IV. Water Resources
 - A. Surface
 - B. Subsurface
 - C. Man's activities
- V. Geological Resources
 - A. Surface
 - B. Subsurface
 - C. Man's activities
- VI. Socio-Economic Resources
 - A. Social
 - B. Economic
 - C. Commerce
 - D. Government
 - E. Archeological

Examination of the preliminary NRIS task force data categorization compels the conclusion that the Natural Resources Information System would provide a sound technical base for a program of land resource management for Texas. A new state information system would not be required if compatibility with the other existing Texas Information Systems (Criminal Justice, and Health) were maintained and only minor additions to the tentative NRIS data categorization scheme were made--namely, additional subcategorization of the socio-economic category VI above--would be appropriate in order for the system to serve most foreseeable technical data needs of State land use planners.

Housing data would constitute one such additional subcategory. The ongoing responsibility for gathering and housing data from (1) all municipal building inspection offices throughout the state, (2) Federal Housing Authority market surveys, and (3) public and private non-profit housing authorities, commissions and agencies, should be assigned to one state agency, probably the Division of Housing, Texas Department of Community Affairs. Once gathered,

* A detailed, tabular listing of data classification by subcategory is scheduled for publication around the first of February, 1973.

the housing data would be prepared for machine processing and programmed into the NRIS-based system for easy access and manipulation.

Another data subcategory of value to land use planning would be that of "land capability" as defined by the Bureau of Economic Geology of The University of Texas. Gathering the requisite information to define land capability would require an inventory of land areas and land use throughout the State* wherein the physical, chemical and biological use capacity of particular land types would be evaluated in terms of specific uses, such as waste disposal, various kinds of construction, devegetation, feed lots, etc. By this method land tracts would be machine coded according to their natural capacity to sustain particular kinds and levels of uses without serious environmental imbalance. Because the Bureau of Economic Geology is an NRIS task force member, the addition of a land capability subcategory to NRIS would seem assured, should the statewide land inventory be completed as proposed.

The advantages of an NRIS-based technical information system are its inclusiveness and the fact that NRIS is almost a reality (WODPS, the information system upon which NRIS is based has long been operational.) All state agencies involved in land resource use decision-making would have direct access. The system could provide an effective interface between the state and federal natural resource agencies to make the best use of data being collected under federal programs, such as EROS (Earth Resources Observations Systems) and ERTS (Earth Resources Technology Satellites), and to facilitate exchange of state information with federal agencies.

Providing direct access to the proposed land use management information system for local and regional planning entities would be a relatively simple and inexpensive matter of procuring remote terminal equipment.

*An inventory of the coastal counties has already been completed under the Coastal Resources Management Program.

FEDERAL REQUIREMENTS--LAND RESOURCE INFORMATION

Federal land use policy legislation, if passed, will provide incentives* for the state land resource management entity to incorporate the following types of information in its technical data base:

- (1) a statewide inventory of Texas' land and natural resources;
- (2) data, on a statewide basis, related to population densities and trends, economic characteristics and projections, environmental conditions and trends, and directions and extent of urban and rural growth; and
- (3) an ongoing inventory of environmental, geological, and physical conditions which influence the desirability of various types of land use.

The NRIS-based information system as outlined would meet technical data requirements of future federal land use management legislation.

*See, e.g., § 632 § 302 (a) passed by the U.S. Senate 19 Sept. 1973. This legislation was reintroduced during present session of Congress.

APPENDIX E

Definitions Taken from THE FLORIDA ENVIRONMENTAL LAND
AND WATER MANAGEMENT ACT OF 1972, Chapter 72-317,
Laws of Florida

- 5(2) An area of critical state concern may be designated only for:
- (a) an area containing, or having a significant impact upon, environmental, historical, natural, or archeological resources of a regional or statewide importance; or
 - (b) an area significantly affected by, or having a significant effect upon, an existing or proposed major public facility or other area of major public investment; or
 - (c) a proposed area of major development potential, which may include a proposed site of a new community designated in a state land development plan.
- 6(1) "Development of regional impact" as used in this section means any development which because of its character, magnitude or location, would have a substantial effect upon the health, safety, or welfare of citizens of more than one county.

APPENDIX C

This appendix will describe the approaches and coordinating procedures TPG and TELM should employ in reaching several types of decisions. These decisions are:

1. TPG's decision on legislative recommendations for the state role in land use planning including:
 - a. Initial articulation of state goals.
 - b. Division of planning responsibilities.
 - c. Design of a permanent state entity to carry out the state's planning role.
 - d. Changes in the powers and procedures of local government necessary to facilitate implementation of the state's planning role.
2. TELM's initial decisions on delineation of critical state areas and types of development and on performance standards for these classifications.
3. TELM decisions on:
 - a. Reclassification of areas and development types.
 - b. Resetting of standards.
 - c. Granting or withholding of development permits.
4. The decision of a local government exercising delegated permit powers to grant or withhold a development permit.

The purpose of these descriptions is to explain the mechanisms provided in all decision processes to maximize opportunities for input to the regulatory process by state agencies, COGs, local government and private groups.

The TPG Decision Process

The Temporary Planning Group has responsibility for making recommendations to the Legislature and Governor on the goals the state should pursue in land use planning, the division of planning powers between state, regional and local government and the design of a permanent state entity to carry out the state's direct responsibilities. The recommended approach to formulating these recommendations is shown in Exhibit C-1.

This exhibit starts with the creation of TPG by legislative action. Creation means a charge, selection of

decision-makers, allocation of funds for staff and a deadline for reporting back to the Legislature.

Once created, TPG has two immediate tasks. The first is to begin the inventory of existing data on land use. This will require TPG staff to enter into immediate dialogue with the staffs of other state, federal and local agencies. The goal will be to finish the inventory by the time the initial set of public hearings are completed. If this deadline is met, it will be possible for TPG staff to begin filling data gaps before the special study groups begin work.

The second task is one of education. TPG desperately needs the input of state agencies, local and regional government and private groups of all persuasions. This input will not come automatically. These input sources will have to be educated on the problems which motivated the Legislature to create TPG, the types of decisions TPG must make, and the opportunities provided for input into the decision process. This education must be imparted in a variety of ways. Where there are structured organizations with known interests in land use, including governmental organizations, the best approach may be to hold seminars. This will enable these groups' questions to be answered in detail by TPG decision-makers. Perhaps more important, it will allow those whose future activities may be affected by TPG recommendations to establish an acquaintance and working relationship with TPG decision-makers. This should do much to facilitate communication throughout the process.

There will be two rounds of public hearings which will have similar structures, but rather different purposes. The first set of hearings will allow the TPG to gain an understanding of how various interests conceptualize land use problems, the proper role for the state and the proper balance of interests. These hearings should be rather free-form allowing anyone present the opportunity to present their views orally or in writing.

Proper notice is essential to the success of these hearings. This means notice sufficient not only to allow people to plan to attend, but sufficient to allow them to think out and perhaps commit to writing their positions. This is particularly important in the case of state agencies and local government. They must be involved in the process and convinced their interests are receiving full consideration. TPG should specifically request position papers from state agencies and local governments well in advance of the hearings. Similar requests should be made to key private interests groups as well.

To facilitate a broad spectrum of input, TPG should schedule several hearings in various parts of the state. Each hearing could conceivably last two to three days depending on the size of the population and the strength of local feelings, which should be welcomed and properly planned. In order to speed the process somewhat, it may be possible to divide TPG into smaller groups so that two or more hearings could be held simultaneously.

Complete records should be kept of all hearings and these records should be exact transcripts. This will insure:

- (1) that all TPG members have a chance to reflect on testimony at a later date, and
- (2) that the large amount of information produced by the hearings will be available to the general public.

After the hearings are completed, TPG members should conduct a series of discussion sessions with their staff. These sessions will serve to formulate sets of alternatives on various issues to receive further study. These issues will include all three types of decisions: goals, division of responsibility and organization.

Many of the issues will concern trade-offs. Members will want to know "what will happen if" It will be the task of the TPG staff, hired or contracted, to attempt to use available data and projection methods to answer these questions.

If the special studies needed to evaluate trade-offs are to be completed in a relatively short time, a great deal of staff may be needed. This report recommends that instead of hiring all new staff or contracting solely with private consultants, TPG take this need as an opportunity to involve other state agencies and local governments in the planning process. The Legislature should authorize TPG to ask for staff from other agencies and levels of government to be temporarily assigned to special studies. TPG should, however, have the funds necessary to reimburse salaries to those agencies lending staff.

Such a procedure will allow the state to take advantage of increasing in-house expertise. It also will allow existing agencies to obtain a detailed inside view regarding how recommendations to the Legislature were formulated and thus feel more comfortable with such recommendations.

These special staff studies can result to two types of responses to the questions posed by TPG members. The staff could make a single recommendation. Alternatively, the staff could present several alternative answers to each question, along with an analysis of the implications of each course of action. This second answer is clearly the most desirable. In most cases the grounds for preferring one alternative to another will be based on value judgments, not purely technical considerations. To allow the staff to rule out all but one alternative is to allow or force them to make the political choice. Such a choice should be reserved as far as possible to the TPG.

Once presented with these alternatives, TPG should fashion a tentative set of goals, division of responsibility, and organizational design of the permanent state entity. Once formulated, these decisions should be checked for their acceptability in light of federal requirements and dominant trends in judicial decisions. When consistent, these tentative arrangements form the basis for the next round of hearings.

Many people have a much easier time expressing their views supporting or criticizing a specific proposal in starting from nothing. Thus the circulation of tentative arrangements will provide a better opportunity for input. In addition, some groups may see in these preliminary arrangements that they will be affected by state action and acquire a new interest in the process. If these benefits are to be realized, it is necessary that TPG undertake a new education and informative effort centered around their tentative recommendations. The object of this effort is not to sell the recommendations, but to present them clearly so as to allow specific criticisms and suggestions of alternatives. Again, state agencies and local governments should receive special briefings. The general public may be reached through newspapers, briefings to civic groups or even through television films and panel discussions.

After the education and informational effort is completed the second set of hearings should be held. This time there should be fewer hearings and of somewhat shorter duration. Those moderating should try to keep discussions centered on criticism of the recommendations rather than going back to all the philosophical questions covered in the first hearings. Again, adequate notice of hearing schedules to all will be crucial to their success.

The second round of hearings will produce additional feedback and additional questions in the minds of

TPG members. In an abbreviated form, the Group will generate more questions to be answered by the staff. A few short special studies should follow resulting in a presentation of the consequences of alternatives to TPG.

Finally, TPG will formulate its final set of recommendations to the legislature. These recommendations should be in the form of proposed legislation with background information and a statement of the alternatives rejected as well as the rationale behind the ones accepted. A final staff check of these recommendations should be made as to their constitutionality, ability to satisfy federal standards and probable interpretation by the judiciary. This check will complete the TPG effort. All recommendations will be formally transmitted to the Governor and Legislature for action.

Initial TELM Decisions

If the Legislature accepts within broad limits the recommendations of TPG, the permanent state entity, TELM will be faced immediately with the massive task of delineating areas and development types of critical state concern and setting standards to use in the evaluation of development proposals in these areas.

In translating legislative intent into lines on maps and enforceable standards, it will be necessary to obtain both technical and public input. What follows is a recommended approach to achieve both. A diagram is also provided in Exhibit C-2.

TELM should begin its task by setting out general classifications of state concern embodying their interpretation of legislative intent. These general statements would then be turned over to the staff for technical study and a presentation of alternatives and their consequences.

This initial effort will probably represent a much heavier work load than TELM will experience permanently. Permanent staff could be augmented by consultants or temporary employees. As with TPG, there are strong reasons for recommending that augmentation be achieved by making temporary assignments to TELM from state agencies, Regional Councils, and local governments. This is one of the best ways of forming working relationships between various governmental entities and increasing the ability of other units of government to understand TELM actions.

These technical studies should result in a series of alternative standards and land classifications representing points on a spectrum of strict to somewhat loose regulation. Most importantly the environmental, economic and social impact of alternatives on various groups should be spelled out. From these alternatives, TELM should select a tentative set of classifications and standards.

TELM must have some indication of public understanding and support of its actions. It can best obtain this through an education and information process followed by public hearings. The procedure would be basically the same as that followed by TPG in goal setting. The important point is that TELM understand the position of various groups, particularly other state agencies and local governments so that there is a clear understanding of the perceived consequences of proposed management.

Following these hearings, TELM will consider the need for alteration of the tentative standards in light of the views of public and private groups. Again, there will be a need to consider the legality of their decisions in light of federal and judicial decisions. This decision process ends with formal adoption of classifications and standards and the beginning of the permit system.

On-going TELM Decision Processes

There are three basic types of decisions TELM can make during normal operations:

1. Changing the scope of regulation by adding or subtracting areas or types of development from those considered to be of overriding state concern.
2. Changing the standards enforced in given classifications.
3. Granting or withholding a permit for development in a development classification of overriding state concern.

Two of these decisions might broadly be called planning and the third regulation. However, all employ the same administrative process and thus can be discussed as one.

These decision processes can begin with a developer, state agency, or local government submitting a proposal to TELM, however, TELM may also initiate these processes. The proposal may request a change in classification of an area, a change in a standard, or a development permit. In each case, TELM must first make the legal determination of its power to make such a decision.

Assuming the matter is subject to TELM's jurisdiction, three actions are taken as shown in Exhibit C-3. First, a hearing on the proposal is scheduled. Second, TELM circulates copies of the proposal to all concerned state, federal and local units of government. Additionally, notice that copies of the proposal are available would be sent to concerned private parties. Third, the proposal would be sent to the TELM staff for technical evaluation of the consequences of various alternatives.

During the period before the hearing several forms of coordination are possible. If the staff feels the proposal is deficient in the information the Agency needs to reach a decision, it may submit questions to the proposer. Additional questions may be submitted by private and public groups to the TELM staff. These same groups may file written arguments they feel should be taken into consideration by the staff in making their evaluation. Such statements will later become a part of the official record of the hearings.

After proper public notice, the hearing would be held in a location appropriate to the proposal under discussion. The hearing would be conducted under rather formal procedures with questioning of witnesses by TELM members. A complete transcript of the hearing would be maintained and available to all interested persons.

The hearing may raise questions the proposer or his opponents are unable to answer during the hearing itself. There should be provision for parties to supply information to TELM at a later date, such information to become a part of the record of the hearing.

After the hearing, TELM members must fashion the questions which in their minds will dictate their decisions. Where there is conflicting data on answers, it will be the job of the technical staff to remove such uncertainty, as they can, through further study. In any event, it will be the task of the staff to present TELM with an understanding of the logical consequences of accepting various assertions of the parties.

The process is completed with a written decision by a member of the majority of TELM.

Exercise of Permit Powers by Local Government

In order to keep as many land use decisions as possible at the local level, it may be deemed desirable to

delegate certain TELM powers to local governments. Such delegation should only be made to localities possessing the technical capabilities necessary to such decision-making. As the local government is to enforce state interests, all power to establish area classifications and set standards should be retained by the state entity. Thus this section is concerned with delegation of power over only one type of decision: the granting or withholding of development permits.

A schematic of this process, including appeals to TELM is shown in Exhibit C-4. The basic difference between the TELM process described above and the local process is the greater amount of review and comment recommended when permit powers are delegated. This recommendation is based on the notion that the interests of the locality are often not those of the state and thus there is a need to make the locality aware of broader interests.

This awareness is achieved in several ways. First, a copy of the proposal is sent to the Regional Council in which the city is located. The terms of delegation should contain the provision that the Regional Council must go on record regarding how the development under consideration affects regional and state concerns. Second, a copy of the proposal should be filed with TELM. TELM will then distribute copies of the proposal through the Division of Planning Coordination to all state, federal, or local units of government which should make input to the decision process.

After study by the local staff, receipt of the necessary statement from the Regional Council and public hearings, the local decision-makers will grant or withhold the requested permit. If all concerned are satisfied with the outcome, the matter ends.

However, there exists the possibility that some interests will think the decision of the local body is inconsistent with state standards and general goals. If this is the case, they should be able to compel a review of the decision by TELM.

Such a review would not constitute a de novo proceeding. The record of the hearing together with any staff studies in support of the decision would be transmitted to TELM. The party requesting the review would file a written argument stating the grounds on which he feels the local decision is inconsistent with state interests.

In many cases, it may be possible for TELM members to reach a decision on the basis of a brief review of these documents. If so, the matter would end. If there are questions which were unanswered in the original proceeding that bear on the outcome, TELM may refer the matter to its staff for study, such study to possibly include further questions to the parties involved.

If necessary, TELM may agree to hold another hearing and hear new testimony on the questions which it feels the decision must be based. After the relevant questions have been resolved to the Agency's satisfaction, or to the degree feasible, TELM will make its decision. This decision will be final except for challenges in the general courts.

There is no guarantee that TELM or the Legislature would ever view a delegation of powers such as described here to be desirable. However, this process does have certain advantages of economy for the state and the advantage of having more decisions made at the local level.

This concludes the discussion of the decision processes from the original goal setting and legislative recommendations of the Temporary Planning Group to the ongoing planning decisions of a permanent state entity. Several points have been emphasized in the recommended processes:

1. Both TPG and TELM will need to educate concerned state agencies, local government, and private groups on their procedures and decision-making processes.
2. Public hearings are an integral part of all decision processes.
3. Where possible, the staffs of other state and local units of government should be temporarily assigned to TPG and TELM to insure understanding and close working relationships.
4. Decisions should be documented through transcripts and written opinions to show groups their input does influence the outcome of planning questions.

Exhibit C - 1

TPG* PROCESSES FOR :

- A. GOAL SETTING
- B. ORGANIZATIONAL DESIGN
- C. INTERGOVERNMENTAL DIVISION OF RESPONSIBILITY

1. Creation of TPG by Governor and Legislature.
2. Seminars to inform state agencies, local governments and private groups on the input and decision processes to be used by TPG.
3. Begin inventory of existing data systems.
4. Set hearing schedules; request position statements from state agencies and local governments.
5. Insure notice of hearing to all concerned.
6. Conduct hearing.
7. Formulation of issues by TPG; instruct staff to conduct special studies.
8. Complete data system inventory.
9. Staff conducts special studies, augmented by personnel from state agencies, local government, universities.
10. Staff fills data gaps as required.
11. Special studies submitted to TPG.
12. TPG makes tentative recommendations on Goals, organization and division of responsibility.
13. Conduct public education information campaign to inform all parties of tentative recommendations; set dates for hearings to receive feedback.
14. Insure notice of hearing to all concerned.
15. Conduct hearing.
16. TPG instructs staff to evaluate hearing feedback.
17. Staff analyzes tentative recommendations for compliance with federal and state legal requirements.
18. Staff makes recommendations to TPG.
19. TPG makes final recommendations; submits report and draft legislation to Governor and Legislature.

Exhibit C - 2

INITIAL TELM* PROCEDURES:

- A. CLASSIFY AREAS AND DEVELOPMENT TYPES SUBJECT TO REGULATION.
- B. SET DEVELOPMENT STANDARDS FOR EACH CLASSIFICATION.
- C. ENACT STANDARDS AND CLASSIFICATIONS AS LEGAL REQUIREMENTS ON DEVELOPERS.

1. TELM provides general instructions to staff on priorities.
2. Conduct seminars to inform state agencies, local government and private groups on TELM interpretation of legislative intent and TELM provesses.
3. Staff conducts studies to set up tentative classifications and standards.
4. Staff conducts data collection necessary to make tentative classifications and standards.

5. Tentative classifications and standards are presented to the public through all available media; hearings scheduled for feedback.
6. Insure notice of hearing to all concerned.
7. Conduct hearing.
8. TELM and staff evaluate feedback from hearings.

9. TELM makes official decisions on classifications and standards enacted as development regulations.

*Texas Entity for Land Management

Exhibit C - 3

TELM* PROCESS FOR CONSIDERING:

- A. REQUESTS FOR CHANGES IN CLASSIFICATIONS
- B. REQUESTS FOR CHANGES IN STANDARDS
- C. REQUESTS FOR DEVELOPMENT PERMITS.

1. Formal request filed with TELM.

2. TELM determines its authority to consider request.

3. Hearing on request scheduled.

4. Request circulated for comment by state agencies and other relevant governments.

8. TELM may submit further questions to applicant.

7. Conduct hearing.

6. Public notice of request and hearing made through all available media.

5. Staff studies the request and may ask for further information from the applicant.

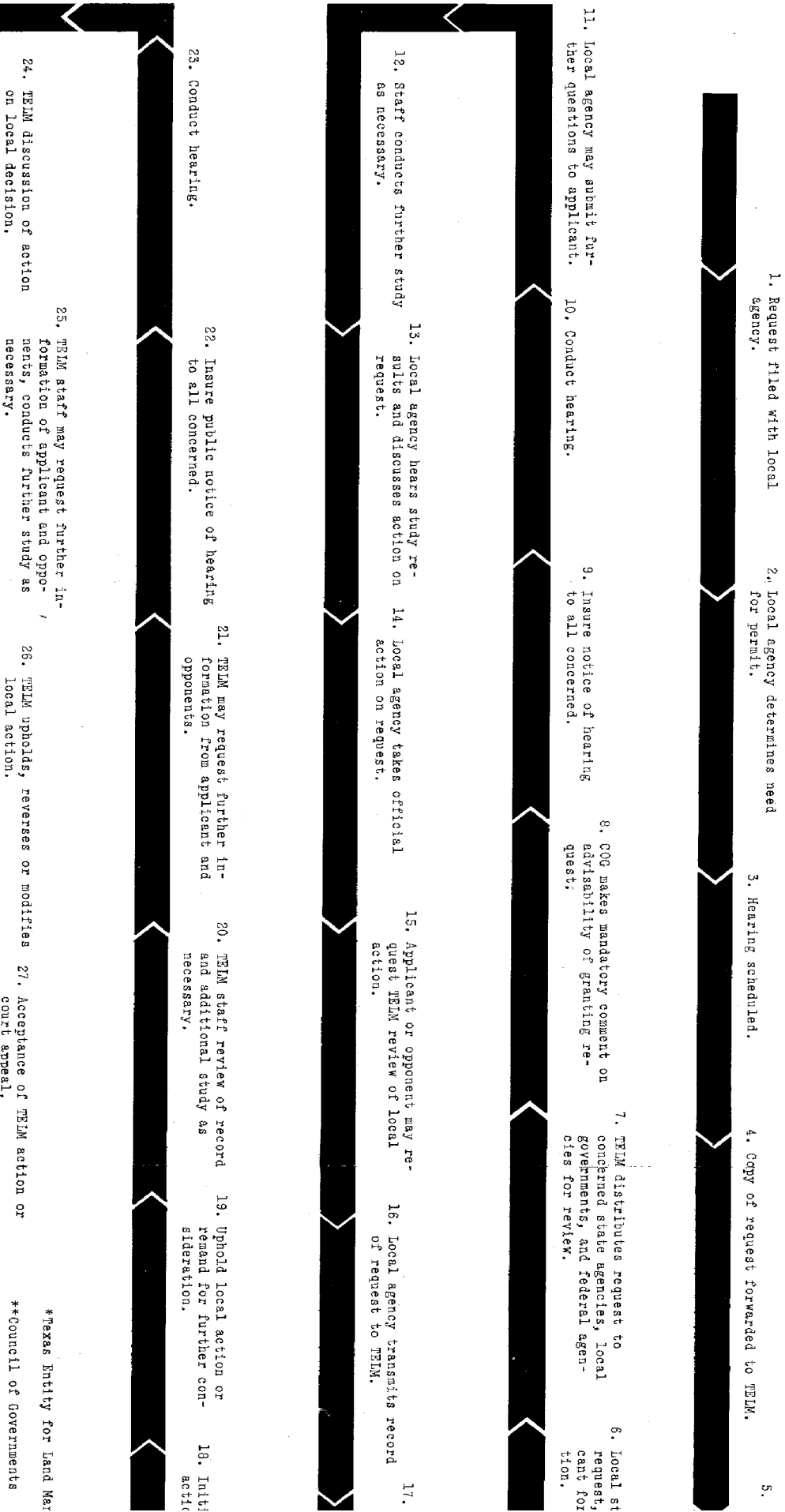
9. Staff conducts further study as necessary.

10. TELM discusses action on request.

11. TELM takes official action on request. Acceptance or decision or court appeal.

Exhibit C - 4

LOCAL GOVERNMENT PROCESS FOR USING
DELEGATED TELM* POWER TO CONSIDER
A REQUEST FOR A DEVELOPMENT PERMIT.



*Texas Entity for Land Mar

**Council of Governments

LOCAL GOVERNMENT PROCESS FOR USING
DELEGATED TELM* POWER TO CONSIDER
A REQUEST FOR A DEVELOPMENT PERMIT.

1. Request filed with local agency.

11. Local agency may submit further questions to applicant. 10. Conduct hearing.

12. Staff conducts further study as necessary. 13. Local agency hears study results and discusses action request.

23. Conduct hearing. 22. Insure public notice of hearing to all concerned.

24. TELM discussion of action on local decision. 25. TELM staff may request further information of applicant and opinions, conducts further study necessary.

Texas Land Use

Developed by

**Research and Planning Consultants
Austin, Texas**

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